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UNITED STATES. CIRCUIT COURT. EASTERN DISTRICT OF PENNSYLVANIA

American Graphophone Co.) In Equity No. 7
versus) on patent 488,381
Thomas E. Challenger) Oct Sess. 1899

1899

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U/ S. Circuit Court. Eastern District of Pennsylvania.

American Graphophone Company	)	October Sessions,
	)	1899, No. 7
versus	)	In Equity on
	)	Patent No.
Thomas E. Challenger	)	488,381

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U.S. Circuit Court
Eastern District of Pennsylvania
Equity No. 7
October Session 1899

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B I L L O F C O M P L A I N T.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

The AMERICAN GRAPHOPHONE COMPANY, a corporation organized and existing under the laws of the State of West Virginia, and having its principal office at Washington City, in the District of Columbia, brings this, its bill of complaint, against T. E. CHALLENGER of No. 1111 Chestnut Street in the City of Philadelphia, an inhabitant of the said Eastern District of Pennsylvania.

And thereupon your orator complains and says:

1. That GIANNI BETTINI then of the City of New York, was the original, first and sole inventor of certain new and useful improvements in phonographs which improvements were not known or used by others inthis country before his invention thereof, and were not patented or described in any printed publication in this or any foreign country before his invention thereof, and were not in public use or on sale in the United States for more than two years prior to his application for a patent therefor, and which had not been abandoned.

2. That thereafter the said GIANNI BETTINI made application in due form of law to the Commissioner of Patents for the grant of Letters Patent of the United States for the said invention, and then and there fully complied in all respects

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with the provisions and requirements of the laws of the United States in such case made and provided; that thereupon, due proceedings being had upon said application, Letters Patent of the United States, in due form of law, were issued and delivered to the said GIANNI BETTINI in the name of the United States of America, under the seal of the Patent Office, and signed and countersigned respectively by the proper officers of the United States, numbered 488,381, and dated December 20, 1892; and that the said Letters-patent did grant to the said GIANNI BETTINI, his heirs or assigns, for a term of seventeen years from the said 20th day of December, 1892, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof, as by reference to the said Letters Patent or a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

3. And your orator further shows that on the 3rd day of March,1897, said GIANNI BETTINI, by an instrument in writing duly signed and delivered, and recorded in the United States Patent Office the 5th dayof March, 1897, did give, grant, and convey to the American Graphophone Company, a corporation organized and existing under the laws of the State of West Virginia, its successors and assigns, the entire right, title and interest in and to said Letters Patent No. 488,381, granted to him as aforesaid, and in and to the invention secured thereby, as by reference to said instrument or a duly authenticated copy thereof, here in Court to be produced, will more fully and at large appear.

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4. That your orator has been ever since the date of the said assignment, and was at the time of the commission of the acts hereinafter complained of, and is now, the sole and exclusive owner of the said Letters Patent and of all claims for infringement thereof; and has been and is, save for the doings of this defendant and others acting in concert with him, in the exclusive possession of said rights and privileges; and is entitled to the exclusive use, benefits, and advantages of the said inventions and improvements, and to sue for and recover to its own use and in its own name all claims for the infringement or violation thereof.

5. And, further, your orator shows that it has never sold any machines or apparatus employing, embodying, or operating or made in accordance with, the invention described and claimed in the Letters Patent aforesaod; or authorized any person or persons to manufacture or use such machines, with the exception of a shop-right granted to the said GIANNI BETTINI and limited to using them at a single shop, and a license to the National Phonograph Company, of Orange, New Jersey, to use said invention under certain restrictions, and that no such machine or apparatus has ever been sold under its patents; thatthe infringing machines now in possession of the said defendant were not sold by complainant, nor under its patents, nor made by its authority.

6. And your orator further shows, upon information and belief, that your orator and all persons making under authority of your orator, machines or apparatus employing, embodying, and operating or made in accordance with, theinvention described and claimed in the Letters Patent aforesaid, have given notice to the public that the same are patented; and

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your orator further shows that the said defendant was duly notified of his infringement herein complained of, but refused to desist therefrom and still continues so to do.

7. And your orator further shows, upon information and belief, that the defendant, Thomas E. CHALLENGER, and others acting in connection with him, well knowing the premises, since the grant of said Letters Patent, and since the acquiring by your orator of its title thereto, as hereinbefore set forth, within the said Eastern District of Pennsylvania and elsewhere in the United States, and particularly in the District of New Jersey, wrongfully and unlawfully, and with the intent to injure your orator, and to deprive it of the just profits resulting from said invention, which profits otherwise would accrue to it from the practise of said invention, and without the license or consent of your orator, has made, used and vended machines or apparatus substantially as described and claimed in said Letters Patent No. 488,381; that he still continues so to do, and that he is threatening to continue the aforesaid unlawful acts to a large extent, all in defiance of the rights secured to your orator as aforesaid, and to its great and irreparable loss and injury, by which your orator has been and still is being deprived of great gains and profits that it would otherwise have obtained but for the aforesaid unlawful doings of the defendant; and your orator further shows that the said defendant has derived and received, and still is deriving and receiving, great gains and profits from such unlawful acts, but to what extent your orator is ignorant and cannot set forth, and, therefore, it prays a discovery thereof.

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And, therefore, your orator prays as follows:

(1) That the defendant, Thomas E. CHALLENGER, his associates, attorneys, servants, clerks, agents, and workmen may be perpetually enjoined and restrained by a writ of injunction, issuing out of and under the seal of this Honorable Court, from directly or indirectly making or causing to be made, using or causing to be used, selling or causing to be sold, any machine or apparatus, employing, embodying, or constructed or operating in accordance with, the invention or imporvement set forth and claimed in the Letters Patent aforesaid, or like or similar to those which the said defendant has heretofore made, used, or sold;

(2) That your Honors will grant unto your orator a preliminary injunction, issuing out of and under the seal of this Honorable Court, enjoining and restraining the said defendant and his associates, attorneys, servants, clerks, agents, and workmen, to the same purpose, tenor and effect, as hereinbefore prayed for with regard to said perpetual injunction;

(3) That the said defendant may be required by a decree of this Honorable Court to account for all such gains and profits as have accrued or arisen, or been earned or received by the said defendant, and all such gains and profits as would have accrued to your orator but for his unlawful doings; and also that this Honorable Court may assess all the damages which your orator has incurred, or shall have incurred, on account of the defendant's infringement of said Letters Patent No. 488,381, and may increase the damages to a sum not exceeding three times the amount thereof; and that the said

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defendant be required to pay over to your orator, in addition to the profits accounted for bythe defendant, the damages incurred by your orator, so as aforesaid assessed by this Honorable Court;

(4) That the defendant be decreed to pay the costs of this suit; and

(5) That your orator may have such other and further relief as the equity of the case may require.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may full, true, and direct answer make - but not under oath, answer under oath being expressly waived - according to the best and utmost of his knowledge, information, remembrance, and belief, to the several matters hereinbefore averred and set forth, as fully and particularly as if the same were repeated, paragraph by paragraph, and said defendant thereto severally and specifically interrogated, may it please your Honors to grant to your orator a writ of subpoena ad respondendum, issuing out of and under the seal of this Honorable Court, directed to the said defendant Thomas E. CHALLENGER, commanding him to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this Court may seem just.

And your orator will ever pray.

American Graphophone Co.
by E. D. Easton
President

Philip Mauro,
Solicitor ~~for Complainant~~.
and Of Counsel for Complainant.

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STATE OF NEW YORK,)
County of New York,) ss.:

EDWARD D. EASTON, being duly sworn, deposes and says that he is president of the AMERICAN GRAPHOPHONE COMPANY, named as complainant in the foregoing bill; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, save as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; and that the seal affixed to the bill is the corporate seal of said complainant, and was by him affixed to the bill by authority of said corporation.

Ed. D. Easton

Subscribed and sworn to before me,
this 2nd day of October, 1899.

William E. Kelly
Notary Public
New York County

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AT A STATED TERM OF THE UNITED STATES Circuit Court for the Eastern District of Pennsylvania, in the Third Circuit, held at the United States Court Rooms in the City of Philadelphia, on the 5th day of December, one thousand eight hundred and ninety-nine.

PRESENT:

Hon. George M. Dallas,
Circuit Judge.

AMERICAN GRAPHOPHONE COMPANY

vs.

THOMAS E. CHALLENGER.

In Equity No. 7
On patent No. 488,381.

Oct Sess 1899

This cause having come on to be heard, ~~if is~~ on motion for decree in accordance with annexed consent, it is, December 5, 1899,

ORDERED, ADJUDGED and DECREED as follows:

That Letters-patent of the United States numbered 488,381, granted December 20th, 1892, to Gianni Bettini, for improvements in Phonographs, are good and valid Letters-patent; that the Complainant, the American Graphophone Company, was at the time of the filing of the bill of complaint herein, possessed of the full and entire right, title and interest in and to the same, and that the defendant, Thomas E. Challenger, has infringed upon said Letters-patent and upon the exclusive rights of the complainant under the same.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Complainant recover of the defendant the profits which the latter has received or which have accrued to him from said infringement by the manufacture and use of machines for making duplicate sound records embodying the invention set forth in said patent, and in addition thereto the damages which the complainant has sustained thereby;

And it being agreed by the parties that a reference to a Master be waived, and that the profits and damages to be recovered by the complainant of the defendant in said cause be assessed at the sum of one dollar, it is further

ORDERED, ADJUDGED and DECREED that the complainant recover of the defendant the sum of one dollar, as damages and profits by reason of said infringement, that judgment be entered for said sum and execution issued thereon;

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a perpetual injunction issue against the defendant in accordance with the prayer of the bill.

Wm. H. Sellers
Circuit Judge.

We hereby consent to the entry and filing of the above decree.

Philip Mauro
Complainants Solicitor.

Howard W. Hayes
Defendants Solicitor.

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